



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 178012

PRELIMINARY RECITALS

Pursuant to a petition filed on November 17, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Trempealeau County Department of Social Services regarding FoodShare benefits (FS), a hearing was held on December 8, 2016, by telephone.

The issues for determination are: 1. whether the agency correctly determined that the petitioner was overpaid \$2,044 in FoodShare (FS) benefits for the time period February 1, 2016 to May 31, 2016 due to client error, and 2. whether the petitioner is liable to repay that amount.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Trempealeau County Department of Social Services
36245 Main St.
PO Box 67
Whitehall, WI 54773-0067

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a former resident of Trempealeau County.

2. The petitioner received FoodShare (FS) benefits as part of an assistance group of three people from at least December 8, 2015 through May 2016. During that period of time, she resided with her two minor children and their father, [REDACTED]. Mr. [REDACTED] is neither a U.S. citizen nor an immigrant eligible to receive FS. The petitioner also received FS benefits for an unspecified period of time prior to December 1, 2015.
3. On November 27, 2015, the petitioner reported and verified to the agency that Mr. [REDACTED] had stopped working at [REDACTED].
4. On December 8, 2015, the petitioner reapplied for FoodShare via telephone. The petitioner reported that Mr. [REDACTED] had begun new employment.
5. On December 9, 2015, the agency mailed the petitioner an "About Your Benefits" notice which stated that she and her two minor children were eligible for \$395 in FS for the time period December 8 – 31, 2015 and for \$511 per month as of January 1, 2016. The notice indicated that it had calculated the petitioner's gross income to be \$613 and her counted income to be \$0. The notice further stated, in relevant part: "you must report within 10 days if someone . . . has a new source of income."
6. Beginning on an unspecified date in December 2015, Mr. [REDACTED] began working for [REDACTED]. He worked 8.5 hours per day and 6 days per week. He earned \$11 per hour and \$2,412.30 per month.
7. From at least December 2015 through May 2016, the petitioner's household also received \$613 in child Supplemental Security Income benefits.
8. On October 12, 2016, the agency sent the petitioner a FoodShare Overpayment Notice which stated that the petitioner had received \$2,044 in FS benefits for which she was not eligible for the time period February 1, 2016 through May 31, 2016 due to client error.
9. On November 17, 2016, the petitioner submitted a request for fair hearing.

DISCUSSION

The federal regulations that govern the FoodShare ("FS") program require the department to take action to establish a claim against any household that received an overpayment of FS regardless of whether that overpayment occurred as a result of an inadvertent household error (also known as a "client error") or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); FoodShare Wisconsin Handbook, § 7.3.2. In other words, a FS recipient who receives a FS benefit overpayment during the twelve months prior to the department's discovery of that overpayment may be required to repay the overpaid benefits regardless of who bears the "fault" for causing the overpayment.

In this case, the agency asserted that the petitioner was overpaid FS benefits as a result of client error; specifically, the petitioner's failure to report that Mr. [REDACTED] began new employment in December 2015 by January 10, 2016. The agency further argued that even if the overpayment occurred as a result of agency error, it has a right to recoup the overpayment. The agency bears the burden of proof in an overpayment case. An agency's finding of overpayment will be upheld if a preponderance of the evidence in the hearing record supports that finding.

It is undisputed that Mr. [REDACTED] was part of the petitioner's household from at least December 2015 and throughout the alleged overpayment period and that Mr. [REDACTED] began working in December 2015. The petitioner did not challenge the agency's calculations of Mr. [REDACTED]'s gross earned income, the assistance group's total countable income, or the overpayment amount itself. And, the evidence in the record clearly shows that the agency did not budget any earned income when determining the petitioner's FS eligibility during the overpayment period.

FoodShare food units not comprised of exclusively elderly, blind, and/or disabled members are required to report to the agency when total monthly gross income increases to an amount that exceeds 130% of the FPL. Such a change must be reported by the 10th of the month following the month in which increase occurs. *FoodShare Wisconsin Handbook* § 6.1.1.2. In December 2015, 130% FPL for a food unit of four (i.e., the petitioner's reporting threshold) was \$2,628. After Mr. [REDACTED] began working in December 2015, the food unit's total income was \$3,025.30 (\$613 SSI + \$2,412.30 gross earned income). The petitioner was thus required to report that increase in income by January 10, 2016 and the sole issue in contention here is whether the petitioner timely reported that increase in income.

The petitioner strenuously and credibly asserted that she reported Mr. [REDACTED]'s new employment via telephone on or about December 8, 2015 while completing an application. Notably, the agency did not submit into evidence the application summary typically generated and sent to a petitioner following the completion of a telephone application. The agency testified that its best evidence of the petitioner's failure to report was the December 8, 2015 *About Your Benefits* notice which indicates that the agency was not budgeting any earned income for the petitioner's food unit. The only other evidence the agency offered to support its assertion that the petitioner did not timely report Mr. [REDACTED]'s income was a case comment created by a worker who did not participate in the hearing which indicates that the petitioner did not report new earned income. Under these circumstances, a preponderance of the evidence in the record does not establish that the petitioner failed to report Mr. [REDACTED]'s new income in December 2015. In other words, the agency has not proven that the overpayment was a result of client error. However, the agency correctly argued that in this case, it has a right to recoup the overpayment regardless of whether the overpayment was caused by agency error.

The final issue that must be addressed is whether a reclassification of the overpayment as one caused by client error to one caused by agency error impacts the petitioner's liability. As stated above, the agency must establish overpayment claims even when the overpayment resulted from agency error. However, whether an overpayment occurs as a result of agency or client error is significant in two respects: 1. If the overpayment occurred as a result of agency error, the agency may recover, at most, that portion of the overpayment issued during the twelve months prior to the date the agency discovered the overpayment; and 2. If the overpayment occurred as a result of client error, the agency does not apply the earned income disregard when calculating the overpayment amount. See *FoodShare Wisconsin Handbook (FSWH)* § 7.3.2.1. In this case, the agency discovered the overpayment no later than October 12, 2016 (i.e., the date of the FS Overpayment Notice). The agency thus may recoup benefits overpaid during the time period February 1, 2016 through May 31, 2016 (i.e., the relevant overpayment period). When calculating the overpayment amount in this case, the agency did not apply the earned income disregard. I thus recalculated the overpayment amount by including the earned income deduction. The application of the earned income deduction in this case, as shown below, does not change the overpayment total.

Federal regulations and state policy set forth rules the Department of Health Services ("the department") must follow in calculating the amount of monthly FoodShare benefits to which an eligible household is entitled. 7 C.F.R. §273.10(e)(1)-(2); *FoodShare Wisconsin Handbook* §4.3 and 4.6. The first step in this calculation requires the agency to count all of the household's monthly nonexempt income.

The second step in calculating a household's monthly FoodShare allotment requires the agency to identify and subtract applicable deductions from the household's nonexempt income. All households are entitled to a standard deduction, the amount of which varies depending on the size of the assistance group. Throughout the overpayment period in this case (February through May of 2016), the standard deduction for a group of three persons was \$155 per month. 7 C.F.R. §273.9(d)(1); *FoodShare Wisconsin Handbook* §4.6.2 and App. 8.1.3 Depending on a household's financial circumstances, it may also qualify for any or all of the following additional deductions: 1. an earned income deduction equal to 20% of total earned income; 2. a medical expense deduction equal to qualifying medical expenses that exceed \$35 per month for elderly individuals

or individuals with disabilities; 3. a child support expense deduction; 4. a dependent care expense deduction; and 5. an excess shelter expense deduction equal to countable shelter expenses that exceed 50% of the household's income remaining after other deductions. 7 C.F.R. §273.9(d)(1)-(6); FoodShare Wisconsin Handbook §4.6. The household's income less all applicable deductions is referred to as the household's "net income."

The final step in calculating a household's monthly FoodShare allotment requires the agency to subtract 30% of the household's net income from the maximum allotment for the applicable household size. 7 C.F.R. §273.10(e)(2)(ii)(A). The department maintains a table that indicates maximum monthly allotment amounts based on a household's net income and household size. See FoodShare Wisconsin Handbook, App. 8.1.2; DHCAA Operations Memo 15-29. In August of 2016, the maximum monthly allotment for a group of three was \$511.

Thus, the FS allotment calculation with the application of the earned income disregard during the overpayment period looks like this:

Total Earned Income:	\$1,809.23
Total Unearned Income:	\$ 613
Total Gross Income:	\$2,422.23
Minus Standard Deduction:	\$155
Minus Earned Income Deduction:	\$361.85
Adjusted Income:	\$1,905.38
Minus Excess Shelter Deduction:	\$155.31
Net adjusted income:	\$1750.07
 Total maximum allotment	 \$511
Minus 30% of net income:	\$525.02
Allotment:	\$0

Because the petitioner was not entitled to receive any FS benefits during the overpayment period, she is liable to repay all the benefits she received during that time period.

CONCLUSIONS OF LAW

The petitioner was overpaid \$2,044 as a result of *agency error* for the time period February 1, 2016 through May 31, 2016 and is liable to repay that full amount to the agency.

THEREFORE, it is

ORDERED

This matter is remanded to the agency to issue an amended FoodShare Overpayment Notice reflecting that the overpayment occurred as a result of agency error. This matter is dismissed in regard to all other issues.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

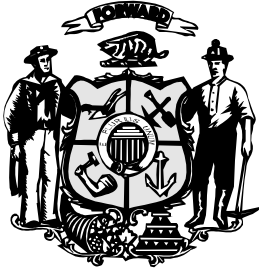
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of January, 2017

\s _____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 9, 2017.

Trempealeau County Department of Soc Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability